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MICHAEL PATRICK McELHINEY

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

UNITED STATES OF AMERICA,
Plaintiff,
v.
MICHAEL PATRICK McELHINEY,
Defendant.

Case No. CR-02-938-GHK

**REQUEST FOR INCREASE
TO CAPITAL RATE BY
STANDBY COUNSEL FOR
DEATH-AUTHORIZED
DEFENDANT MICHAEL
McELHINEY; DECLARATION
OF DARLENE RICKER**

**[PROPOSED] ORDER
LODGED**

Judge: Hon. George H. King
Time/Date: N/A

Darlene M. Ricker, appointed standby counsel for death-authorized
defendant Michael Patrick McElhiney, hereby requests that she be compensated
at the CJA capital counsel rate for work performed on the instant case on or after
October 4, 2005, the date on which Mr. McElhiney received death authorization
from the Government.

REQUEST FOR INCREASE TO CAPITAL RATE; DARLENE RICKER DECLARATION

lodged order
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CLERK U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.
LOS ANGELES
FILED

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1 This request is based upon memoranda from the Administrative Office of
2 the United States Courts, which announced a maximum \$160 hourly capital
3 compensation rate for work performed on or after February 1, 2005, and a
4 maximum rate of \$163 per hour for work performed on or after January 1, 2006,
5 and upon the attached Declaration of Counsel [Darlene M. Ricker].
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9 Respectfully submitted,

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11 DATED: January 10, 2006



12 DARLENE RICKER
13 Standby counsel for defendant
14 MICHAEL PATRICK McELHINEY
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DECLARATION OF COUNSEL
[DARLENE RICKER]

I, DARLENE RICKER, state and declare as follows:

1. I am an attorney licensed to practice law in the state of California and before the bar of this Court. All of the facts stated herein are true of my personal knowledge or upon belief and information and if called upon to testify thereto, I could and would do so competently.
2. This declaration is made in support of the attached Request for Increase to Capital Compensation Rate in the instant case.
3. From the outset of the instant case, this has been designated as a federal capital prosecution and Michael Patrick McElhiney has been designated as a death-eligible defendant.
4. On April 15, 2003, the Court appointed me at the standard CJA attorney rate of \$90 per hour to represent Mr. McElhiney as guilt-phase standby counsel, effective *nunc pro tunc* to April 3, 2003.
5. The Court has previously indicated that it would consider requests for an increase to capital rates by guilt-phase counsel in the instant

1 case after death authorization was obtained by the Government. (For
2 example, the docket reflects that on July 11, 2005, the Court ordered
3 that both guilt and penalty phase counsel for co-defendant Robert
4 Griffin in the instant case were to be compensated at the \$160 hourly
5 capital rate because Mr. Griffin had been death-authorized.)
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8 6. On October 4, 2005, the Government filed its Notice of Intent to
9 Seek the Death Penalty against Mr. McElhiney.
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11 7. Because Mr. McElhiney has been death-authorized, I respectfully
12 request that the Court order that I be compensated at the capital rate,
13 effective *nunc pro tunc* to October 4, 2005.
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15 8. On January 28, 2005, the Administrative Office of the United States
16 Courts issued a memorandum stating that effective February 1, 2005,
17 the maximum CJA capital counsel rate would be increased from
18 \$125 to \$160 per hour.
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21 9. On January 4, 2006, the Office of the CJA Supervising Attorney for
22 the Central District issued a memorandum stating that pursuant to
23 Public Law 109-115, effective January 1, 2006, the maximum CJA
24 capital counsel rate would be increased from \$160 to \$163 per hour.
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1 10. I believe that my 10 years of experience on federal capital matters
2 qualifies me for the maximum hourly rate, based on the following:

- 3
4 (a) In the mid-1990s, I assisted lead counsel on several federal
5 capital habeas matters in the Central District (*Kelvin Malone v.*
6 *Calderon*, # CV-96-4040-WJR; *Earl Jones v. Calderon*, # CV-94-
7 816-WMB). I drafted major portions of those federal petitions;
8
9 (b) I have been a member of the federal Capital Habeas Attorney
10 Panel in this district since the inception of that panel in 1998;
11
12 (c) I was a member of the federal Capital Habeas Attorney Panel in
13 the Northern District of California and was appointed as counsel
14 for capital petitioner David Esco Welch (*Welch v. Woodford*,
15 # CV-00-20242-RMW) at the maximum CJA capital rate;
16
17 (d) For the past seven years, I have been lead counsel in the federal
18 capital habeas matter of *Bradford v. Woodford*, # CV-98-6453-
19 RSWL. On March 10, 1999, I was appointed as counsel for
20 capital petitioner Bill Bradford at the maximum CJA capital rate;
21
22 (e) I am currently CJA counsel in the pending federal capital habeas
23 matter of *Mendoza v. Stokes*, CV-03-6194-SJO (Cent. Dist.
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1 Calif.). I was appointed at the maximum CJA capital rate; and
2 (f) I have handled federal death-eligible prosecutions in this district,
3 including *United States v. Figueroa et al*, # ED-CR-01-88-RT, in
4 which I was appointed as learned capital counsel and was
5 compensated at the maximum capital rate.
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8 11. In addition to my federal capital experience, I have handled several
9 state-level capital matters, both at the trial and appellate levels,
10 including:
11

12 (a) I hold a dual appointment as appellate and habeas counsel for
13 Randall Clark Wall, whose capital case is pending before the
14 Supreme Court of California (# S044693). I have represented
15 Mr. Wall for the past 5 years and was appointed in October
16 2000. I also represented Mr. Bradford, the federal capital
17 petitioner referenced in para. 10 (d), in his state exhaustion
18 proceedings before the California Supreme Court; and
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22 (b) In 1998, I was retained to assist lead counsel with a high-
23 profile capital murder trial that lasted three months in Los
24 Angeles Superior Court (*People v. John Orr*) (Glendale Fire
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1 Department arson investigator capitally charged with four
2 arson-murders). I worked extensively on guilt- and penalty-
3 phase issues.
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5 12. Based on the foregoing, I respectfully request that the Court order
6 *nunc pro tunc* that I may be compensated at the CJA capital rate of \$160 per hour,
7 effective October 4, 2005 (the date on which Mr. McElhiney was death-
8 authorized), and at \$163 per hour effective January 1, 2006 (in accordance with
9 the most recent increase in the CJA capital counsel rate).
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12 Executed this 10th day of January, 2006, under penalty of perjury of the laws
13 of the United States of America, at Malibu, California.
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18 DARLENE M. RICKER
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PROOF OF SERVICE

I, Darlene Ricker, declare that: I am employed in Los Angeles County, California; my business address is P.O. Box 2285, Malibu, California 90265; I am over the age of eighteen years; I am not a party to the above-entitled action; I am a member of the Bar of the United States District Court for the Central District of California, and that I served a copy of the attached **"REQUEST FOR INCREASE TO CAPITAL RATE BY STANDBY COUNSEL FOR DEFENDANT MICHAEL McELHINEY; DARLENE RICKER DECLARATION"** on the following individual(s), addressed as follows, by placing same in a sealed envelope for collection and mailing via the United States Post Office at Malibu, California, with sufficient first-class postage attached, on January 9, 2006:

SEE ATTACHED SERVICE LIST

This proof of service is executed at Malibu, California, on January 9, 2006.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge.



DARLENE M. RICKER

REQUEST FOR INCREASE TO CAPITAL RATE; DARLENE RICKER DECLARATION

ATTACHMENT

UNITED STATES v. BARRY BYRON MILLS, et al.
No. CR 02-938-GHK

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